



## ECS CAROLINAS, LLP

Geotechnical • Construction Materials • Environmental • Facilities

"Setting the Standard for Service"

NC Registered Engineering Firm F-1078

March 5, 2012

Mr. Aaron Church  
Yadkin County  
217 East Willow Street  
Yadkinville, North Carolina 27055

RE: Proposal and Contract with Terms and Conditions  
Yadkin County Jail Addition  
Construction Materials Testing and Special Inspections Observations  
ECS Carolinas, LLP Proposal 09.18817-PR1

Dear Mr. Church:

ECS Carolinas, LLP (ECS) is pleased to submit this proposal and contract to provide construction materials testing and special inspection observations for the Yadkin County Jail Addition project located in Yadkinville, North Carolina. Our experience will help us provide efficient, cost-effective construction materials testing, special inspection observations and engineering consulting services. We have included our understanding of the project description, anticipated scope of services, a unit rate fee schedule, authorization form and ECS' terms and conditions of service.

### Project Description

The project consists of a new jail addition of approximately 25,500 square feet. It will be located on a 2.1 acre site in downtown Yadkinville, North Carolina, bounded by Cherry Street, Van Buren Street and Hemlock Street. The construction consists of cast in place foundations and retaining walls, load-bearing reinforced concrete masonry walls, precast concrete supported floors, steel bar joists, and metal deck roof framing, brick exterior walls, single ply membrane roof and associated asphalt pavements. Site work has been completed under another contract.

### Project Servicing Requirements

Services will be provided on a full-time or on-call basis, depending upon the level of construction activity. Our project manager and field supervisors will consult with your management team to provide the appropriate level of staffing to meet the project requirements. We request a **24-hour** notice to allow for efficient scheduling of field personnel.

### Field Reporting

*ECS is the only firm of our kind in North Carolina with completely wireless field data transmission allowing us to provide reports within one to two business days of the site inspection. Our electronic system allows our field personnel to submit reports directly to the project manager and principal engineers before leaving the site. ECS shall provide immediate notification of any non-conforming items to the Contractor and shall provide written reports of*

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work/testing performed to the Contractor on a daily basis before the ECS technician leaves the site. Once the reports are reviewed, our system will allow us to submit the reports to you and those you designate via e-mail in PDF format. Upon completion of the project, we will be happy to provide you copies of all reports on a CD, and hard copies can be mailed to you upon your request.

### **Qualifications**

ECS Carolinas, LLP located in Greensboro, North Carolina has executed over 20,200 projects since opening in March 1996. We are presently staffed with over 70 personnel including 12 registered professional engineers, geologists, and scientists. Our professional staff has experience ranging from 5 to 35 years in practice in the fields of environmental engineering, geotechnical engineering, special inspection observations and construction materials testing. We have over 32 technicians that are trained and certified in ASTM, ACI, NCDOT and ICC testing procedures and 3 metals technicians trained and certified in both visual and nondestructive testing in accordance with ICC, AWS and ASNT recommendations. We have one of the most certified laboratories in the State of North Carolina with accreditations by America Association of State Highway Transportation Officials, (AASHTO) and the U.S. Army Corps of Engineers and certified by the North Carolina Department of transportation (NCDOT).

### **Flat Fee for All Services**

ECS will perform all services contemplated by this Agreement for a flat fee of Fifty-Two Thousand and Fifty Dollars (**\$52,050.00**). Payment of this fee will constitute full compensation and reimbursement to ECS, and for this amount ECS will fully perform and complete all work and services contemplated by this Agreement, which shall include performing all special inspection services and construction materials testing contemplated by the Statement of Special Inspections (drawing G1.11, dated 2-10-12) or by the project specifications for the jail addition project. Notwithstanding any other provision in this Agreement, in no event shall the total amount paid by the County for all these services exceed this \$52,050.00 amount. Except for retesting and re-inspection of construction that occurs after the date that the County signs this Agreement and that replaces or is necessitated by work that failed to comply with the Contract Documents (which is addressed below), ECS shall not be entitled to any greater compensation or reimbursement, even if (by example only) completing all services requires more ECS personnel time, visits, or tests than anticipated. However, any retesting and re-inspecting of construction that occurs after the date that the County signs this Agreement and that replaces or is necessitated by work that failed to comply with the Contract Documents will be charged to the project's general contractor, unless the retesting or re-inspection was needed because, due to no fault of the general contractor, unsuitable soils had to be replaced. ECS will invoice for any such retesting and re-inspecting in accordance with the attached Greensboro 2012 Fee Schedule for Construction Materials Testing and Special Inspection Services. This fee schedule is incorporated into this Agreement for no other purpose.

The County shall pay the flat fee of \$52,050 to ECS per the following schedule: (1) the County shall pay ECS \$8,000.00 within a reasonable time after both parties have signed this Agreement, (2) the County shall pay ECS a monthly fee of \$2,789.28 at the end of each month for fourteen (14) months beginning with June 2012 (because the parties are signing this Agreement in September, the payments for June, July and August 2012 will be made within a reasonable time

after both parties have signed this Agreement), and (3) the County shall pay the remaining \$5,000.00 to ECS upon completion by ECS to the County's satisfaction of all services contemplated by this Agreement.

### **SCOPE OF SERVICES: REQUIRED TESTING AND INSPECTION SERVICES**

The following testing and inspection services are described further in the Contract Documents (defined below), which are incorporated by reference into this Agreement and which are defined below. ECS will provide these services on a continuous or periodic basis as specified in the Project Manual, which is part of the Contract Documents.

The Scope of Services shall include Special Inspections Services as provided for in Chapter 17 of the State Building Code as well as Independent Testing Lab Services as set forth in the Contract Documents, and shall include the following:

We shall provide qualified construction testing technicians, certified special inspection technicians, engineering interns and registered engineers to perform the requested construction materials testing and special inspections observation on a periodic or continuous basis as required by project specifications and drawings and construction activity.

A) **Earthwork/Foundations/Retaining Wall:**

1. Perform appropriate laboratory testing on materials proposed for use as fill, backfill, and paving subgrade in accordance with project specifications. Testing may include:
  - Grain Size Distribution, ASTM D-422
  - #200 Material Washed Sieve Analysis, ASTM C-117
  - Proctor Moisture Density Relationships ASTM D-698
2. Observe conditions of bottom of excavations prior to foundation preparation, including proof rolling and other testing of subgrades; note seepage of water, and suggest and observe corrective measures at problem areas.
3. Evaluate foundation bearing conditions with a Dynamic Cone Penetrometer (ASTM STP-399) for suitable bearing conditions.
4. Periodically observe the placement of fill and backfill (including backfill in utility trenches and against foundation walls) to test compliance with project requirements.
5. Perform in-place density tests as required by project specifications, and test each lift for compaction per the Nuclear Gauge Test Method (ASTM D-6938), Drive Tube Method (ASTM D-2937), Sand Cone Method (ASTM D-1556), or the Rubber Balloon Method (ASTM D-2167).
6. Where deficiencies are noted during fill or backfill placement, suggest and observe remedial actions, including reworking and re-compacting of materials.
7. Document the dimensions of foundation elements and report compliance with design specifications and approved drawings.
8. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

B) Cast-in-Place Concrete:

1. Test and report concrete for compliance with the provisions of ACI 318, 301, 214, 304, 305 and 306, local building codes, generally accepted construction practices, and specific project requirements.
2. Observe placement of reinforcing steel and document proper size, grade, spacing cover, cleanliness, length, location and type of splices, and report compliance with project plans and specifications.
3. Observe placement of concrete and document procedures with regard to forming, vibration, and curing.
4. Sample concrete at the frequency stated in the project specifications and perform the following tests and functions:
  - Confirm mix design
  - Slump
  - Air Content (Volumetric or Pressure Pot)
  - Temperature
  - Batch-to-placement time
  - Unit Weight
  - Cast test cylinders
  - Sampling, testing, and curing of specimens in the field shall be performed in accordance with applicable ASTM guidelines and project requirements. Additional tests shall be performed as needed in the event deficiencies are encountered. Compliance with extreme weather procedures will also be documented.
5. Cure and test concrete cylinders in the laboratory as directed by the project specifications and in accordance with ASTM C-31 and C-39. Four (4) by eight (8) cylinders size is proposed.
6. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

C) Structural Steel:

1. Observe fabricated items for compliance with project specifications unless fabricator has been approved by design professional. We have assumed that the fabricator has been approved by the design professional and will not require fabricator shop inspections.
2. Review certified mill test reports and verify the certificate of compliance for following material:
  - High strength bolts, nuts, and washers: AISC 360, Section A3.3
  - Structural steel members: ASTM A 568
  - Weld filler materials: AISC 360, Section A3.5
3. Perform the following periodic/continuous inspections as related to on-site structural steel erection and high strength bolting:

- Visual observation of bolted connections.
    - Bearing-type connections
    - Slip-critical connections
  - Check torque on bolted connections utilizing torque wrench
    - As specified by approved construction documents
  - Check tension on bolted connections utilizing Skidmore bolt tension calibrator
    - As specified by approved construction documents
  - 4. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies. Perform the following periodic/continuous inspections as related to on-site structural steel erection and welded connections:
    - Continuous observation of following welded connections:
      - Complete and partial penetration groove welds
      - Multi-pass fillet welds
      - Single pass fillet welds exceeding 5/16 inches
    - Periodic observation of following welded connections:
      - Single pass fillet welds 5/16 inches or less
      - Floor and roof deck welds
    - Perform ultrasonic or radiation testing to determine quality continuously observed welds as required by approved construction documents.
  - 5. Periodic observation of steel framing and frame joints for compliance with approved construction documents:
    - Bracing and stiffening elements
    - Location of framing members
    - Connection detail at framing location
  - 6. Provide documentation of events in the field and notify the appropriate persons upon recognition of non-compliant items.
- D) Masonry:
1. Periodically observe procedures and materials to document compliance with ACI 530.1, Contract Documents and sound construction practices.
  2. Cast grout prisms as required in the specifications, and test grout for compressive strength as specified in ASTM C 1019.
  3. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.
- E) Paving:
1. Observe proofrolling of subgrades, and suggest and observe corrective action at excessively soft areas prior to placement of subbase course.
  2. Observe placement of subbase course and perform appropriate in-place density tests as directed by specifications.

3. Observe placement, rolling operations and temperature of paving mixture at time of placement.
4. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

### **Understanding Construction Materials Testing**

Construction materials testing (CMT) and special inspection services are performed to help provide the project's contractors, designers, owners and local code officials some indication of the level of compliance obtained by the installing subcontractors with the project specifications. These services are provided at periodic intervals which typically are defined by the project specifications and on some occasions by the applicable building code. Test locations for most materials, i.e. soils, concrete, and fireproofing, are generally based upon random selection; as such not all materials incorporated into a construction project are tested or observed.

Obviously the greater the testing frequency, i.e. presence of our field technicians, the greater the confidence level that the test results are representative of other untested areas; however, no amount of testing can assure 100% compliance. Testing and observation services provided by ECS do not relieve the installing subcontractors from their obligation to install all materials in accordance with the applicable project plans and specifications. ECS makes reasonable effort to test in accordance with the applicable project requirements and to identify areas or materials that may not comply with the project specifications. However, due to the periodic and random nature of our testing, we cannot guarantee that all materials have been installed in accordance with the specifications. The responsibility to correct or remediate non-complying conditions, even non-complying conditions discovered after testing or during subsequent phases of construction remains solely with the installing subcontractors.

### **Terms and Conditions of Service**

This letter, along with the Contract Documents (defined below), the Proposal Acceptance Form, and the attached "Terms and Conditions of Service" shall constitute the Agreement between Yadkin County and ECS Carolinas, LLP.

### **Contract Documents**

The Contract Documents consist of:

1. The project drawings prepared by Ware Bonsall, dated February 10, 2012.
2. Project Manual Volumes I, II, and III, dated December 1, 2011.
3. Revision No. 1 prepared by Ware Bonsall, dated April 20, 2012
4. S&ME, Inc. Report of Subsurface Exploration dated September 26, 2011 and S&ME Report of Borrow Soil Evaluation dated October 20, 2011

### **Authorization Requirements**

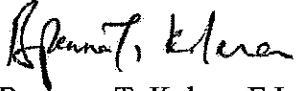
By signing this letter, ECS Carolinas, LLP has confirmed that it intends to be bound by this Agreement. Signing and returning the Proposal Acceptance Form indicates Yadkin County's acceptance of this Agreement. Please note that we will be unable to issue formal reports until Yadkin County executes this Agreement.

Yadkin County Jail Addition, Yadkinville, North Carolina  
ECS Proposal No. 09.18817-PR2  
March 5, 2012

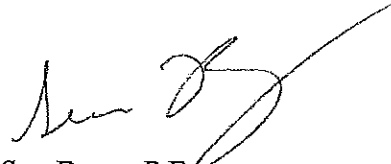
Thank you for giving us the opportunity to provide you with this proposal, if you have any questions or concerns please do not hesitate to contact us at (336) 856-7150.

Respectfully,

ECS Carolinas, LLP



Bopanna T. Kolera, E.I.  
Project Manager



Reviewed by: Sun Breza, P.E.  
Principal Engineer

Attachments:            Proposal Acceptance Form  
                              Terms and Conditions of Service

Yadkin County Jail Addition, Yadkinville, North Carolina  
ECS Proposal No. 09.18817-PR2  
March 5, 2012

**ECS Carolinas, LLP**  
**Proposal Acceptance Form**

ECS Proposal No.: 09.18817-PR1  
Proposed Services: Construction Materials Testing & Special Inspection Observations  
Project Name: Yadkinville County Jail Addition  
Project Location: Yadkinville, North Carolina

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please complete and return this page to ECS to indicate acceptance of this Agreement and to initiate work on the above-referenced project. The Client's signature above also indicates that he/she has read or has had the opportunity to read the accompanying ECS Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

**Invoicing Information**

(Please Print or Type)

**Remit Invoices to:**

Contact Name:	Ms. Lisa Hughes
Company Name:	Yadkin County
Billing Address:	PO Box 146, Yadkinville NC 27055
Telephone Number:	336-679-4200
Fax Number:	336-679-6005
E-mail Address:	lhughes@yadkincountync.gov

Purchase Order/Subcontract No: \_\_\_\_\_ N/A

Special Conditions: \_\_\_\_\_ N/A

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **ECS Carolinas, LLP TERMS AND CONDITIONS OF SERVICE**

These Terms and Conditions of Service, including any supplements that may be agreed to in a writing signed by both parties, along with the March 5, 2012 letter from ECS Carolinas, LLP to Aaron Church, the Contract Documents, the Proposal Acceptance Form, and ECS' 2012 Fee Schedule constitute the entire Agreement ["AGREEMENT"] under which services are to be provided by ECS Carolinas, LLP ["ECS"] (including its employees, officers, successors and assigns) for Yadkin County, North Carolina ["CLIENT"].

### **INDEPENDENT CONSULTANT STATUS**

Except as may be otherwise noted herein, ECS shall serve as an independent professional consultant or contractor to CLIENT and shall have control over, and responsibility for, the means and methods for providing the services identified in this Agreement's Scope of Services ["Services"], including the retention of subcontractors and subconsultants. Unless expressly stated in ECS' Scope of Services, ECS shall not serve as CLIENT'S agent or representative.

### **STANDARD OF CARE**

ECS shall perform the Services in a manner consistent with that level of skill and care ordinarily exercised by competent members of the same profession providing similar services in the same region, under similar conditions during the same time period. Except for representations, warranties, and guarantees expressly made in this Agreement, no other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any ECS report, opinion, plan or other Document of Service (as defined below), in connection with ECS' Services.

CLIENT understands and agrees that ECS' professional judgment must rely on the facts learned during performance of the Services. CLIENT acknowledges that such data collection is limited to the immediate area that is sampled, tested and/or observed. Consequently, CLIENT agrees that it shall not bring a claim, based upon facts subsequently learned, regarding conditions between sampling/testing points, in areas not evaluated by ECS, or which were not part of the immediate area(s) evaluated by ECS, so long as ECS complied with the standard of care provided for in this Agreement.

ECS' professional Services shall be provided in a manner consistent with sound engineering and professional practices. If a situation arises that causes ECS to reasonably believe compliance with CLIENT'S wishes could result in ECS violating applicable laws or regulations ["Laws or Regulations"], or will expose ECS to claims or other charges, ECS shall so advise CLIENT. If CLIENT'S actions or inaction result in a violation of applicable Laws or Regulations, ECS shall have the right to terminate its Services in accordance with the TERMINATION provisions of this AGREEMENT.

If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if ECS is required to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make. CLIENT also agrees that ECS shall not bear liability for failing to report conditions to regulatory authorities that are CLIENT'S responsibility to report.

### **CLIENT DISCLOSURES**

As requested by ECS, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed beneath the Site's (as defined below) surface, where the Scope of Services requires ECS to penetrate the Site surface.

CLIENT shall notify ECS of any known, assumed, or suspected Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site. Hazardous Materials shall be defined as any substance, waste or material that is defined or regulated as hazardous or toxic or as a pollutant or contaminant under any federal or state law.

### **INFORMATION PROVIDED BY OTHERS**

CLIENT waives any claim of liability against ECS regarding any claim for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents and other information in any form provided to ECS, including such information that becomes incorporated into ECS Documents of Service, unless the errors, omissions, or inaccuracies were caused by ECS.

### **CONCEALED RISKS**

CLIENT acknowledges that special risks are associated with the identification of concealed conditions [i.e., subsurface conditions, conditions behind a wall, etc., that are hidden from view, are not readily apparent, or cannot be accessed for sampling/testing].

Conditions that ECS infers to exist between sampling/testing points may differ significantly from the conditions that exist at the sampling/testing points. Since some conditions can change substantially over time, the CLIENT recognizes that, because of natural occurrences or human intervention at or near the Site, actual conditions discovered through sampling/testing may be subject to rapid or gradual change.

ECS will make reasonable efforts to anticipate and identify potential concealed conditions for exploration, sampling or testing. However, CLIENT understands that such risks cannot be eliminated and agrees that the Scope of Services is that which CLIENT agrees suits CLIENT'S own risk tolerances. CLIENT may request ECS to evaluate the risks and provide a higher level of exploration to reduce such risks, if desired or appropriate.

### **RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**

CLIENT warrants that it possesses the authority to provide right of entry permission to the Site for the performance of ECS' Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property owned by CLIENT in order for ECS to perform the Scope of Services.

Except where ECS' Scope of Services explicitly includes obtaining permits, licenses, and/or utility clearances for the

performance of ECS' Services, CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS.

ECS will take reasonable precautions to limit damage to the site where the Services are provided ["Site"] along with all improvements at the Site ["Improvements"] during the performance of ECS' Services. CLIENT understands that use of exploration, sampling, or testing equipment may cause some normal and customary damage, the correction and restoration of which is not part of this AGREEMENT, unless explicitly stated in ECS' Scope of Services, and reflected in the Professional Fees.

CLIENT agrees that it will not bring any claims for liability or for injury or loss allegedly arising from the discovery of Hazardous Materials, or suspected Hazardous Materials, or ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of Hazardous Materials.

#### **UNDERGROUND UTILITIES**

In addition to CLIENT-furnished information regarding underground utilities, ECS shall take reasonable and locally customary precautions, possibly including contacting local public and/or private utility locating services, and/or conducting research of publicly available information, to identify underground utilities, as deemed appropriate in ECS' professional opinion.

CLIENT recognizes that despite due care, ECS may be unable to identify the locations of all subsurface utility lines and man-made features, and that information obtained by ECS and/or ECS' subcontractor(s) or provided to ECS from any entity may contain errors or be incomplete.

CLIENT agrees that ECS shall not be liable for damage or injury, consequential economic damages, and/or penalties resulting from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing and correctly shown on the diagram(s) furnished by CLIENT or CLIENT'S consultants, or for underground features not marked, or improperly located by governmental or quasi-governmental locators, utility owners, or private utility locating services.

#### **SAMPLES**

Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are the property of CLIENT. ECS will store samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from those samples, unless other arrangements are mutually agreed upon in writing. Samples consumed by laboratory testing procedures will not be stored as outlined above.

Unless CLIENT directs otherwise, CLIENT authorizes ECS to dispose of CLIENT'S nonhazardous samples and sampling or testing process byproducts in accordance with applicable Laws and Regulations.

#### **ENVIRONMENTAL RISKS**

All substances on, in, or under CLIENT'S Site, or obtained from CLIENT'S Site as samples or as byproducts of the sampling process, are and will remain CLIENT'S property.

When Hazardous Materials are known, assumed, or suspected to exist at the Site, ECS shall take appropriate

precautions deemed prudent in ECS' sole and professional opinion to comply with applicable Laws and Regulations, and to reduce the risks to ECS' employees, public health, safety, and welfare, and the environment. CLIENT agrees to compensate ECS for such reasonable precautions, but to obtain that compensation ECS must notify CLIENT and obtain CLIENT'S approval of those precautions before expense is incurred.

When Hazardous Materials are known, assumed, or suspected to exist at the Site, ECS will handle such materials as Hazardous Materials. ECS or ECS' subcontractors will containerize and label such Materials in accordance with applicable Laws and Regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval and lawful removal, transport and disposal of such contaminated samples, and sampling process byproducts.

Unless explicitly stated in ECS' Scope of Services, ECS shall not subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT, not ECS, shall make final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by Hazardous Materials contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary) so that ECS shall not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of ECS' Services indicated herein, CLIENT agrees this risk cannot be eliminated. CLIENT will not hold ECS liable for such cross-contamination if ECS provides its Services in accordance with applicable industry standards and the Laws and Regulations.

CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having Hazardous Materials on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected by Hazardous Materials. Given the foregoing, CLIENT'S acceptance of this AGREEMENT shall signify that CLIENT understands the limitations associated with Phase I ESAs.

#### **OWNERSHIP OF DOCUMENTS**

With the exception of the copies of the documents provided by ECS to the CLIENT ["Documents of Service"], all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents

and estimates of any kind furnished by ECS maintained in any form deemed appropriate by ECS, are and remain, the property of ECS.

Any exploration, reconnaissance, data review, observations, testing, surveys or similar Services, analyses and recommendations associated with the Services shall be provided by ECS (including subcontracted Services) for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT or CLIENT'S contractors on this particular project is not permitted.

CLIENT agrees to not use ECS' Documents of Service for any other projects. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s).

CLIENT agrees that ECS' Documents of Service may not under any circumstances be altered by any party except ECS. CLIENT warrants that ECS' Documents of Service shall be used only without alteration.

Except for daily field reports and concrete test reports sent electronically by ECS to CLIENT and CLIENT'S designees, the following shall apply to all electronic files: Files in electronic media format of text, data, graphics, or other types that are furnished by ECS, for which ECS also furnishes hard copies, are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk to the extent that those electronic files contain errors that cause them to differ from the hard copies of the same documents. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

#### **SAFETY**

CLIENT agrees that ECS is responsible solely for the basic safety of ECS' employees on the site. These responsibilities shall not be inferred by any party to mean that ECS has responsibility for any portion of site safety for any reason. Unless otherwise expressly agreed to in writing, ECS' Scope of Services excludes responsibility for any aspect of site safety other than for ECS' own employees, and nothing herein shall be construed to relieve CLIENT and/or its other contractors, consultants, or other parties from their responsibility for the safety of their own employees. For active construction sites, CLIENT also agrees that the General Contractor is solely responsible for site safety, and that ECS personnel rely on the safety measures provided by the General Contractor.

In the event ECS expressly assumes health and safety responsibilities for toxic or other concerns specified, the acceptance of such responsibility does not and shall not be deemed an acceptance of responsibility for any other health and safety requirements, such as those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

#### **CONSTRUCTION TESTING AND REMEDIATION SERVICES**

CLIENT understands that construction testing and observation Services are conducted to reduce, not eliminate,

the risk of problems arising during or after construction or remediation.

Monitoring and/or testing Services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction, nor for complying with applicable Laws and Regulations and codes.

The professional activities of ECS, or the presence of ECS employees and subcontractors, shall not be construed to imply ECS has any responsibility for the means, methods, techniques, sequencing of construction, or procedures of construction selected, for safety precautions and programs incidental to the Contractor's Work. Furthermore, ECS does not and shall not have or accept authority to supervise, direct, control, or stop Contractor's Work.

#### **CERTIFICATIONS**

CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding Services provided by ECS. Any "certification" required of ECS by the CLIENT, or jurisdiction(s) having authority over some or all aspects of the Project, shall consist of ECS' inferences and professional opinions based on limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. ECS' "certification" shall consist of ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of responsibilities or obligations such parties have. CLIENT agrees not to make resolution of any dispute with ECS or payment of any amount due to ECS in any way contingent upon ECS signing any such "certification" documents.

#### **BILLINGS AND PAYMENTS**

Billings will be based on the unit rates, travel costs, and other reimbursable expenses stated in the 2012 Fee Schedule.

CLIENT recognizes that time is of the essence with respect of payment of ECS' invoices, and that timely payment is a material part of the consideration of this AGREEMENT. Payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices shall be due and payable upon receipt.

If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within twenty-one (21) calendar days of the date that CLIENT receives the invoice and agrees to pay the undisputed amount of such invoice promptly.

ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment will first be applied to accrued interest and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies,

permits, final adjudication of a lawsuit in which ECS is not involved, upon CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT.

#### **DEFECTS IN SERVICE**

CLIENT and CLIENT'S personnel and contractors shall promptly inform ECS of any actual or suspected defects in ECS' Services, to help ECS take those prompt, effective measures that will help reduce or eliminate the consequences of any such defect. Corrections of defects attributable to ECS' Services shall be provided at no cost to CLIENT, except in the case that the deficiency is directly attributable to CLIENT-furnished information that contained material errors, CLIENT shall compensate ECS for the costs of correcting such defects.

Modifications to reports, documents and plans required by CLIENT shall not be considered to be defects in Services.

#### **INSURANCE**

ECS represents that it and its subcontractors and subconsultants are protected by Workers Compensation insurance as required by applicable law and that ECS at all times shall carry general liability, automobile liability, and other liability insurance covering the Services provided by ECS with limits as shown on the attached Acord March 1, 2012 Certificate of Liability Insurance for ECS Carolinas, LLP, which is incorporated by reference.

ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance, the cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

#### **LIMITATION OF LIABILITY**

**CLIENT AGREES TO ALLOCATE CERTAIN OF THE RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT, ARISING FROM ECS' PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW, AS FOLLOWS.**

ECS' liability to CLIENT shall not exceed the dollar values identified as the Limits on the attached Acord March 1, 2012 Certificate of Liability Insurance for ECS Carolinas, LLP.

CLIENT agrees that ECS shall not be responsible for bodily injury and property damage or losses to the extent caused by acts or omissions by the CLIENT, its employees, agents, staff, consultants or subcontractors.

#### **INDEMNIFICATION**

To the fullest extent permitted by applicable Law, ECS agrees, subject to the Limitation of Liability provision of this AGREEMENT, to indemnify, defend, and hold harmless CLIENT from and against any and all liability, claims,

damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] to the extent caused by ECS' negligent performance of its Services.

To the fullest extent permitted by applicable Law, CLIENT agrees to indemnify, defend, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] to the extent caused by the negligent acts of the CLIENT.

It is specifically understood and agreed that in no case shall ECS or CLIENT be required to pay an amount of Damages proportional to its respective culpability, or any share of any amount levied to recognize more than actual economic damages, subject to any limitations of liability and INDEMNIFICATION provisions contained in this AGREEMENT.

**IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT LEGAL COUNSEL BE RETAINED BY CLIENT BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**

#### **CONSEQUENTIAL DAMAGES**

CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or wherever committed by the CLIENT or ECS, their employees, consultants, agents, contractors or subcontractors, or whether such liability arises in breach of contract or warranty, tort (including negligence), Statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

#### **THIRD PARTY CLAIMS EXCLUSION**

This AGREEMENT shall not create any rights or benefits to parties other than CLIENT and ECS. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without both CLIENT'S and ECS' written consent and the third-party's agreement to be bound to the same terms and conditions contained in this AGREEMENT as CLIENT, and third-party's agreement that ECS' Scope of Services performed is adequate.

#### **DISPUTE RESOLUTION**

All claims, disputes or controversies ["Disputes"] arising out of, or in relation to the interpretation, application or enforcement of this AGREEMENT shall be decided as follows:

CLIENT and ECS agree to attend a dispute resolution meeting within fourteen (14) days of identification of a Dispute by either party. CLIENT and ECS agree to negotiate in good faith to resolve the Dispute.

Should negotiation fail to resolve the dispute, CLIENT and ECS agree to mediate their dispute via a mediator selected by either party, and acceptable to both parties.

Should mediation fail to result in resolution of the Dispute, CLIENT and ECS agree that litigation may be brought by either party.

This AGREEMENT including all matters related to performance and remediation shall be interpreted according to the substantive Laws of the state of North Carolina (but not including its choice of law rules).

#### **CURING A BREACH**

A party that believes the other has materially breached this AGREEMENT may issue a written termination notice to the other, identifying the cause for termination within five (5) business days of identifying such cause. Both parties shall then bargain promptly and in good faith to cure such cause. If an acceptable cure can be achieved within fourteen (14) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

Either party may waive any right provided by this AGREEMENT in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

#### **TERMINATION**

CLIENT or ECS may terminate this AGREEMENT for breach of this AGREEMENT, or for any other reasons which may arise. In the event of termination, the party effecting termination shall so notify the other party in writing, and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall compensate ECS for Services rendered before termination in accordance with this Agreement.

#### **TIME BAR TO LEGAL ACTION**

Unless prohibited by Law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that claims by either party arising out of this AGREEMENT or the Services provided hereunder shall not be initiated more than two (2) years from the time the party knew, or should have known, of the condition giving rise to its claim, and shall under no circumstances be initiated more than three (3) years from the date of substantial completion of ECS' Services.

#### **ASSIGNMENT**

Except for Services normally or customarily subcontracted by ECS in the performance of its Services including, but not limited to surveyors, specialized consultants, drilling and excavating subcontractors, and testing laboratories, neither the CLIENT nor ECS may delegate, assign, sublet or transfer its duties, responsibilities or interests in this AGREEMENT without the written consent of the other party.

#### **SEVERABILITY**

Any provision of this AGREEMENT later held to violate a Law or Regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of, or at least addresses, the issues covered by the original provision.

#### **TITLES**

The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

#### **SURVIVAL**

All obligations arising prior to the termination of this AGREEMENT and all provisions of this AGREEMENT allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of this AGREEMENT.

#### **ENTIRE AGREEMENT**

This AGREEMENT shall constitute the entire AGREEMENT between CLIENT and ECS concerning the subject matter. CLIENT acknowledges that all prior understandings and negotiations concerning the subject matter are superseded by this AGREEMENT. CLIENT acknowledges acceptance of these terms by submitting a CLIENT Work Authorization to ECS.

The parties acknowledge that this Agreement does not supersede or replace the agreement between CLIENT and ECS dated October 18, 2011, that concerns separate work performed by ECS on the jail addition project.

CLIENT and ECS agree that subsequent modifications to this AGREEMENT shall not be binding unless made in writing and signed by authorized representatives of both parties.

All preprinted Terms and Conditions on CLIENT'S purchase order or Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by this AGREEMENT.

<End of Terms and Conditions of Service>